

# Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402  
Phone 707-528-8175 Fax 707-528-8675  
lhm28843@sbcglobal.net



***Via Certified Mailing -  
Return Receipt Requested***

February 8, 2013

Thomas Arthur Giovanonni  
Dan Giovanonni  
Owners, Operators, Site Managers  
Napa Valley Marina, Inc.  
1200 Milton Road  
Napa, CA 94559

**Re: Notice of Violations and Intent to File Suit Under the Federal Water  
Pollution Control Act (Clean Water Act)**

Dear Owners, Operators and Site Managers:

## **NOTICE**

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring at the Napa Valley Marina facility located at 1200 Milton Road in Napa. Notice is being sent to you as the as the responsible owners, officers, operators or managers of this property and facility. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit and unlawful discharge of pollutants from Napa Valley Marina into the Napa River.

CWA § 505(b) requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the state in which the violations occur.

As required by the CWA, this Notice provides notice of the violations that have occurred, and continue to occur at the Napa Valley Marina facility. Consequently, Napa Valley Marina, Inc. (the "Discharger") is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled

to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, or Federal or State Order or Plan issued under the CWA in particular, but not limited to, CWA § 505(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board's Water Quality Control Plan or "Basin Plan," as exemplified by the incidents of non-compliance identified and outlined in this Notice.

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement, River Watch notices the Discharger of the ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ ("General Permit") relating to the marine facility services for the maintenance and repair of vessels at the Napa Valley Marina site.

The Discharger filed a Notice of Intent (NOI) agreeing to comply with the terms and conditions of the General Permit. The State Water Resources Control Board approved the NOI on or about December 15, 1998, and the Discharger was assigned Waste Discharger Identification ("WDID") number 2\_28I014841. River Watch contends that in the operation of the Napa Valley Marina facility, the Discharger has failed and is failing to comply with the terms and conditions of the General Permit requiring the preparation, implementation, review and update of an adequate Storm Water Pollution Prevention Plan ("SWPPP"), the elimination of all non-authorized storm water discharges, and the development and implementation of an adequate monitoring and reporting program.

Compliance with the monitoring and reporting program is central to the effectiveness of the General Permit program. Napa Valley Marina, however, has failed and is failing to comply with the Annual Reporting requirements in the General Permit.

The 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 Annual Reports for the Napa Valley Marina facility include only limited sampling (for pH, Conductivity, and Total Suspended Solids, Oil & Grease, and Total Organic Carbon only), demonstrating that the Discharger failed to adequately sample for the full range of pollutants that have a reasonable potential of being present in discharges from the Napa Valley Marina facility, which identifies on the facility website the conduct of a broad range of "repair" operations ([www.napavalleymarina.com/Pages/repair.html](http://www.napavalleymarina.com/Pages/repair.html); February 4, 2013).



The range of pollutants for which sampling is required includes the pollutants listed both in the California Toxics Rule ("CTR," 40 C.F.R. part 131) as well as EPA Benchmarks. Compliance with the CTR and EPA Benchmarks would illustrate whether the Discharger implemented Best Management Practices ("BMPs") by the use of the Best Available Technology Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology ("BCT"). Specific additional pollutants for which sampling is required are clearly stated on Page 1 of the 2007-2008, 2008-2009, 2009-2010, 2010-2011 Annual Reports as "Additional Table D Parameters: Al, Fe, Pb, Zn." Sampling for aluminum, iron, lead, and zinc should be augmented with sampling for copper, a toxic metal found in the paint applied to boats and which has a "reasonable potential" of being present in discharges to the Napa River from the Napa Valley Marina facility. Paint is specifically identified as a "pollutant" in the facility's SWPPP on file with the Regional Water Quality Control Board ("Section 5 – Potential Pollutant Sources and Associated BMPs; Subsection 2 – Source: Boat/Equipment Maintenance Area").

The 2007-2008, 2008-2009, 2009-2010, 2010-2011, and 2011-2012 Annual Reports fail to include sampling and analysis from two annual storm events. The 2007-2008 Annual Report states the failure to provide a second sample is based on it "didn't rain;" the 2008-2009, 2009-2010, and 2010-2011 Annual Reports provide no explanation. The failure to fully sample during each of the past five (5) years based on an absence of rain events sufficient to complete the sampling requirement is contradicted by the evidence of reported sampling by other facilities in close proximity to Napa Valley Marina that are also covered under the General Permit and reported to the State and Regional Boards.<sup>1</sup>

The 2011-2012 Annual Report, received by the Regional Board on or about September 12, 2012, was delinquent. Under "Specific Information, Monitoring and Reporting Program, Section D – Sampling and Analysis Exemptions and Reductions," the Report includes a handwritten statement that no sampling and analysis was conducted because "no storm water released." The Napa Valley Marina explains the failure to provide the required sampling in a September 11, 2012 letter to the Regional Board (titled "Re: Delinquent Annual Report") as being the result of the facility's not having "any storm water to report." The facility letter states that "there was not much rain and the rain we received came late this season, all storm water was pumped to our evaporation ponds." As detailed above, sufficient storm events occurred to permit Napa Valley Marina to conduct two samplings and analyses.

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<sup>1</sup> Note that the report of storm events by the National Weather Service Forecast Office for "Downtown San Francisco F-6" ([http://www.wrh.noaa.gov/mtr/SFD\\_F6/sfd\\_f6.php](http://www.wrh.noaa.gov/mtr/SFD_F6/sfd_f6.php)) demonstrates that Napa Valley Marina had sufficient opportunity to have conduct the full complement of 10 water quality samples during the period 2007-2012.

Further, the “evaporation ponds” identified in the letter to the Regional Board and maintained at the Napa Valley Marina facility are unlined and hydrologically connected to the Napa River. A discharge to these “evaporation ponds” is a non-storm water discharge to the surface waters of the Napa River requiring a NPDES permit.

Finally, the Annual Report form requires facilities covered under the General Permit to provide “Specific Information” and an “Annual Comprehensive Site Compliance Evaluation.” Each of the five (5) most recent Annual Reports that Napa Valley Marina submitted to the California Regional Water Quality Control Board fail to fully provide the required data mandated by these provisions. The absence of this information contradicts the assertion (marked “Yes”) in each Annual Report (other than the 2011-2012 Report where no response is provided) under “Annual Comprehensive Site Compliance Evaluation (ACSCE)” Section J (ACSCE Certification) that states “Based on your ACSCE, do you certify compliance with the Industrial Activities Storm Water General Permit?” While each Annual Reporting form includes deficiencies, the 2011-2012 Report is particularly lacking in the completion of Sections D (Sampling and Analysis Exemptions and Reductions), E (Sampling and Analysis Results), F (Quarterly Visual Observations), G (Monthly Wet Season Visual Observations), H (ACSCE Checklist), I (ACSCE Evaluation Report), and J (ACSCE Certification). The failure to fully and accurately provide the required information on the Annual Report contradicts the signed “Annual Report Certification,” which provides that the signer of the Annual Report attests that the “information submitted is, to the best of my knowledge and belief, true, accurate and complete.”

2. *The activity alleged to constitute a violation.*

The Discharger’s operations include, but are not limited to, engine installation, removal and, repair, osmotic and blister repair, paint preparation, painting, and a range of boat repairs to keels, rudders, etc., as listed on the Napa Valley Marina website ([www.napa-valleymarina.com/Pages/repair.html](http://www.napa-valleymarina.com/Pages/repair.html); February 4, 2013).

The SWPPP states that within the approximately 40-acre site, the “potential pollutant sources” are the “Aboveground Fuel Storage Tank(s) and Fueling Areas/ Dock,” “Boat / Equipment Maintenance Area,” Battery Storage Area (Discharged Batteries),” Hazardous Waste Storage Area,” “Wash Rack,” “Unpaved Vehicle / Boat Parking or Storage Area,” “Municipal Garbage Dumpster,” and “Pump Out Station.” The SWPPP identifies the “pollutants” of concern to include “petroleum hydrocarbons, sulfuric acid, lead, oil and grease, anti-freeze, solvents, paints, heavy metals, soaps, sediment, biodegradable organic matter, sanitary waste, bacteria, and organics.” (SWPPP on file with the Regional Water Quality Control Board (“Section 5 – Potential Pollutant Sources and Associated BMPs”).



The work at the Napa Valley Marina facility is conducted both indoors and outdoors. The outdoor work is undertaken on a permeable and impermeable paved yard with two (2) identified storm drains. Both the storm drains and the navigable waters of the Napa River are in close proximity to marine repair and maintenance activities at the site. Because the property on which the Napa Valley Marina facility is located is subject to rain events, a range of pollutants identified above can discharge to the Napa River.

To properly regulate these activities and control the discharge of these types of pollutants, the State Water Resources Control Board requires industrial facilities to obtain and comply with the terms and conditions of an individual NPDES permit or seek coverage under the General Permit (or obtain exemption under the terms of the General Permit from its requirements). Review of the public record by River Watch reveals that the Discharger obtained coverage under the General Permit but fails to comply with its environmentally protective requirements, in particular the implementation of effective BMPs, and compliance with the critically important sampling and comprehensive annual reporting requirement.

River Watch, in addition to alleging illegal storm water discharges, alleges the Discharger is discharging non-storm water that is not authorized under the General Permit from its facility, in violation of CWA § 301(a). These discharges, which require a NPDES permit, include discharges from the "evaporation ponds" as discussed above, the power-washing of equipment and vessels, and painting and repair activities that allow the discharge (via surface water and drift) of pollutants to waters of the United States

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations is Napa Valley Marina, Inc., the Napa Valley Marina facility, its owners and operators.

4. *The location of the alleged violation.*

The location or locations of the various violations is the permanent address of the Napa Valley Marina facility at 1200 Milton Road in Napa, California, including the adjoining waters of the tidally influenced Napa River - a water of the United States.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

The range of dates covered by this Notice is from February 1, 2008 to February 1, 2013. River Watch will from time to time update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is California River Watch, 290 S. Main St., #817, Sebastopol, CA 95472 – a non-profit corporation organized under the laws of the State of California, dedicated to the protection, enhancement and restoration of the surface and groundwaters of the State of California including all rivers, creeks, streams, wetlands, vernal pools and tributaries of California. River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys.

River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be addressed as follows:

Law Offices of Jack Silver  
David Weinsoff, Esq.  
P.O. Box 5469  
Santa Rosa, CA 95402-5469  
Tel. 707 528-8175  
Fax. 707 528-8675  
Email: [lh28843@sbcglobal.net](mailto:lh28843@sbcglobal.net).

#### **STATUTORY BACKGROUND**

CWA § 301(a), 33 U.S.C. §1311(a), prohibits the discharge of any pollutant into waters of the United States, unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual NPDES permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. §1342. CWA § 402(p), 33 U.S.C. §1342(p), establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. EPA has authorized California's State Water Resources Control Board to issue NPDES permits including general NPDES permits in California.

The State Water Resources Control Board elected to issue a statewide general permit for industrial discharges, and issued the General Permit on or about November 19, 1991, modified the General Permit on or about September 17, 1992, and reissued the General Permit on or about April 17, 1997, pursuant to CWA § 402(p).



In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

The General Permit contains certain absolute prohibitions. Discharge Prohibition A(1) of the General Permit prohibits the direct or indirect discharge of materials other than storm water ("non-storm water discharges"), which are not otherwise regulated by a NPDES permit, to the waters of the United States. Discharge Prohibition A(2) prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges to any surface or ground water that adversely impact human health or the environment. Receiving Water Limitation C(2) prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Quality Control Board Basin Plan.

In addition to absolute prohibitions, the General Permit contains a variety of substantive and procedural requirements that dischargers must meet. Facilities discharging, or having the potential to discharge, storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a NOI. The General Permit requires existing dischargers to file NOIs before March 30, 1992.

Dischargers must also develop and implement a SWPPP which must comply with the standards of BAT and BCT. The SWPPP must, among other requirements:

- Identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges [Section A(2)]. BMPs must implement BAT and BCT [Section B(3)].
- Include a description of individuals and their responsibilities for developing and implementing the SWPPP [Section A(3)]; a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity [Section A(4)]; a list of significant materials handled and stored at the site [Section A(5)]; and, a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate

generating activities, and a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur [Section A(6)].

- Include an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective [Section A(7), (8)].
- Be periodically evaluated to ensure effectiveness and must be revised where necessary [Section A(9),(10)].

The General Permit requires dischargers to eliminate all non-storm water discharges to storm water conveyance systems other than those specifically set forth in Special Condition D(1)(a) of the General Permit and meeting each of the conditions set forth in Special Condition D(1)(b).

As part of their monitoring program, dischargers must identify all storm water discharge locations that produce a significant storm water discharge, evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the SWPPP are adequate and properly implemented. Dischargers must conduct visual observations of these discharge locations for at least one storm per month during the wet season (October through May) and record their findings in their Annual Report. Dischargers must also collect and analyze storm water samples from at least two storms per year in compliance with the criteria set forth in Section B(5). Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution in compliance with Section B(7).

Section B(14) of the General Permit requires dischargers to submit an "Annual Report" by July 1 of each year to the executive officer of the relevant Regional Water Quality Control Board. Section A(9)(d) of the General Permit requires the discharger to include in the annual report an evaluation of the discharger's storm water controls, including certifying compliance with the General Permit. *See also* Sections C(9), C(10) and B(14).

The EPA has established Parameter Benchmark Values as guidelines for determining whether a facility discharging storm water has implemented the requisite BAT and BCT. (65 Fed. Reg. 64746, 64767 (Oct. 30, 2000)). CTR limitations are also applicable to all non-storm water and storm water discharges. (40 C.F.R. part 131).



The Regional Water Quality Control Board has established water quality standards for the San Francisco basin. This Basin Plan includes a narrative toxicity standard and a narrative oil and grease standard. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." The Basin Plan establishes limits on metals, solvents, pesticides and other hydrocarbons.

## **VIOLATIONS**

River Watch contends that between February 1, 2008 and February 1, 2013 the Discharger violated the CWA, the Basin Plan and the Code of Federal Regulations by discharging pollutants to waters of the United States without an individual NPDES permit, or in violation of the General Permit.

The violations discussed herein are derived from eye witness reports and records publicly available, or records in the possession and control of Napa Valley Marina. Furthermore, River Watch contends these violations are continuing.

As discussed above, the Discharger has failed and is failing to consistently complete and report to the State Water Resources Control Board two annual sampling and analysis results. In addition, the Discharger, in the annual sampling and analysis that it has conducted, has failed and is failing to consistently sample for the full range of pollutants commonly found in discharges from boat building, maintenance and repair facilities such as the Napa Valley Marina facility including, but not limited to, zinc, aluminum, iron, lead and copper.

Finally, River Watch also believes that the Napa Valley Marina site is neither properly bermed nor operated to ensure that storm and non-storm water discharges are properly contained, controlled, and/or monitored. As a result, the Discharger fails to follow the requirements of the General Permit in its sampling protocols by failing to consistently capture "first flush" samples and failing to properly sample from all the outfalls of the facility.

## **REMEDIAL MEASURES REQUESTED**

River Watch believes that implementation of the following remedial measures are necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts of its non-compliance upon public health and the environment surrounding the Napa Valley Marina facility:

1. Prohibition of the discharges of pollutants including, but not limited to, petroleum hydrocarbons, sulfuric acid, lead, oil and grease, anti-freeze, solvents, paints, heavy metals (including copper and zinc), soaps, sediment, biodegradable organic matter,

sanitary waste, bacteria, and organics from the vessel repair and maintenance activities;

2. Compliance with the terms and conditions of the General Permit, and BMPs detailed in the EPA's Industrial Stormwater Fact Sheet Series, Sector R: Ship and Boat Building or Repair Yards" (EPA Office of Water, EPA-833-F-06-033, December 2006;(www.epa.gov/npdes/pubs/sector\_r\_shipbuilding.pdf.);
3. Compliance with the storm water sampling, monitoring and reporting requirements of the General Permit;
4. Sampling of storm water at least four (4) times per year over each of the next five (5) years: at "first flush"; the first significant rain after "first flush"; the first significant rain after April 1; and the second significant rain after April 1;
5. 100% of the discharge from the Napa Valley Marina site and facility must be discharged through discrete conveyances;
6. Any discharge from the Napa Valley Marina site and facility to a water of the United States must be sampled during the four (4) sampling events identified in paragraph #4 above;
7. Preparation and submittal to the Regional Water Quality Control Board of a "Reasonable Potential Analysis" for the Napa Valley Marina site and its operations; and,
8. Preparation of an updated SWPPP including a monitoring program, with a copy provided to River Watch.

### **CONCLUSION**

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$32,500 per day/per violation for all violations occurring through January 12, 2009, and \$37,500 per day/per violation for all violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4.

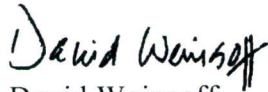


The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

River Watch believes this Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch has cause to file a citizen's suit under CWA § 505(a) against the Discharger for the violations of the CWA described in this Notice.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations identified in this Notice. However, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

  
David Weinsoff

DW:lhbm

Attachment - Google Map

cc: Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
Washington, D.C. 20460

✓ Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812

Executive Officer  
Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay Street / Suite 1400  
Oakland, CA 94612

Bruce A. Meyers  
Registered Agent for Service  
Napa Valley Marina, Inc.  
1000 Main Street / 3<sup>rd</sup> Floor  
Napa, CA 94559